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**west virginia department of environmental protection**

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Division of Water and Waste Management  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304-2345  
Phone: 304-926-0495  
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Joe Manchin III, Governor  
Stephanie R. Timmermeyer, Cabinet Secretary  
www.wvdep.org

**ORDER  
ISSUED UNDER THE  
WATER POLLUTION CONTROL ACT  
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11**

**TO:** INDEPENDENCE COAL COMPANY INC  
HC 78 BOX 1800  
MADISON, WV 25130

**DATE:** April 5, 2007

**ORDER NO.:** 1066

**RE:** WV/NPDES Permit No. WV1017152

This Order is issued pursuant to the authority vested in the Director of the Division of Water and Waste Management (hereinafter "DWWM") of the Department of Environmental Protection (hereinafter "DEP") under Chapter 22, Article 11, Section 1 et. seq., including but not limited to, Chapter 22, Article 11, Section 6, of the Code of West Virginia to INDEPENDENCE COAL COMPANY INC.

**FINDINGS OF FACT**

In support of this Order, the Director hereby finds the following:

1. Permittee owns and operates a treatment system, which discharges pollutants into the Waters of the State.
2. Permittee was issued WVNPDES Water Pollution Control Permit No. WV1017152, on 08/20/2004, for the operation and maintenance of its facilities, and for the discharge of pollutants from these facilities.
3. WVNPDES Permit No. WV1017152 prescribes certain effluent limitations and monitoring requirements for selenium.
4. The permittee cannot achieve compliance with the final effluent limitations for selenium. A schedule of compliance is contained herein to implement a phased abatement plan to upgrade the treatment facilities.
5. The Environmental Protection Agency (hereinafter "EPA") has concluded that a fish-tissue approach is better than a conventional water concentration approach to protect aquatic life from chronic adverse effects of selenium. EPA has noticed Draft Aquatic Life Criteria for Selenium in the Federal Register dated December 17, 2004, and is seeking scientific information, data and views.

6. DEP has undertaken a study to determine selenium bioaccumulation rates in select Waters of the State. DEP intends to use the results of this study to review the selenium criteria with the most current state of science on selenium toxicity.

In consideration of the above, this Order modifies the final effluent limitations and interim self-monitoring requirements, and requires compliance with the schedule contained herein.

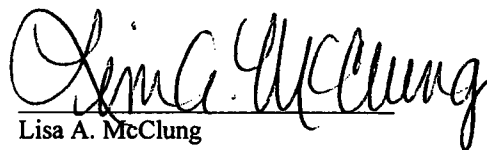
### **ORDER OF COMPLIANCE**

And now, this 5th day of April, 2007, Permittee is hereby ORDERED to comply with the following:

1. Your permit is hereby modified to extend the compliance deadline for your final selenium effluent limitations for three (3) years from the effective date of this Order for the outlets in Attachment A.
2. Comply with the interim self-monitoring and reporting requirements specified in Attachment A until compliance with the Schedule established in Attachment B is attained. The interim selenium self-monitoring requirements are subject to all requirements and conditions of a WVNPDES Water Pollution Control Permit.
3. The final selenium effluent limitations and monitoring requirements shall be attained in accordance with the schedule established in Attachment B.
4. Permittee will submit a Status Report to the inspector every six (6) months from the effective date of this Amended Order. The Status Report shall indicate the progress toward completion of the interim requirements and indicate a projected completion date.

Compliance with the terms and conditions of this Order shall not be construed to relieve permittee of the obligation to comply with the terms and conditions of its WVNPDES Permit or of any applicable State or Federal law. Violation of this Order is a violation of the West Virginia Code Chapter 22, Article 11, and may result in enforcement actions as outlined in the Act.

This ORDER shall be effective upon receipt.

  
Lisa A. McClung  
Director

**Attachments**

cc: Regional Office File  
Environmental Inspector  
Headquarters File

## Attachment A

**1. The permittee is authorized to discharge from Outlet Number(s) listed below:**

**2. EFFLUENT LIMITATIONS AND MONITORING FREQUENCY:** Outlets should be limited and monitored by the permittee as specified below:

Outlet Number	Effluent Type	Latitude Longitude	Elevation In Feet	EFFLUENT CHARACTERISTICS	Begins	Ends	Quan/ Conc	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS			
								Min. Daily	Avg. Monthly	Max. Daily	Units.	Measurement Freq.	Sample Type	
040	F	37°51'30" 81°45'25"	1475	Flow	04/29/2005		Quan	N/A	Report Only	Report Only	GPM	Semi-monthly	Estimated	
				pH	04/29/2005		Conc	6.00			9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	04/29/2005		Conc	N/A	35.00		70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	04/29/2005		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab	
				Selenium, Total Recoverable	04/05/2007	04/05/2010	Conc	Report Only	Report Only	UG/L	Semi-monthly	Grab		
				Iron, Total (As Fe)	04/29/2005		Conc	N/A	3.00	6.00	MG/L	Semi-monthly	Grab	
				Manganese, Total	04/29/2005		Conc	N/A	2.00	4.00	MG/L	Semi-monthly	Grab	
				Aluminum, Dissolved (As AL)	05/30/2008		Conc	N/A	Report Only	Report Only	MG/L	Semi-monthly	Grab	
		(See 3, 4)												
041	F	37°56'31" 81°45'19"	1475	Flow	04/29/2005		Quan	N/A	Report Only	Report Only	GPM	Semi-monthly	Estimated	
				pH	04/29/2005		Conc	6.00	N/A	9.00	Std Units	Semi-monthly	Grab	
				Total Suspended Solids	04/29/2005		Conc	N/A	35.00	70.00	MG/L	Semi-monthly	Grab	
				Settleable Solids	04/29/2005		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab	
				Selenium, Total Recoverable	04/05/2007	04/05/2010	Conc	Report Only	Report Only	UG/L	Semi-monthly	Grab		
				Iron, Total (As Fe)	04/29/2005		Conc	N/A	3.00	6.00	MG/L	Semi-monthly	Grab	
				Manganese, Total	04/29/2005		Conc	N/A	2.00	4.00	MG/L	Semi-monthly	Grab	
				Aluminum, Dissolved (As AL)	05/30/2008		Conc	N/A	Report Only	Report Only	MG/L	Semi-monthly	Grab	
		(See 3, 4)												
PLAINTIFFS' EXHIBIT 7														

**PLAINTIFFS' EXHIBIT 7**

Permit No. WV1017152

## Attachment A

**A. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge from Outlet Number(s) listed below:

2. **EFFLUENT LIMITATIONS AND MONITORING FREQUENCY:** Outlets should be limited and monitored by the permittee as specified below:

Outlet Number	Effluent Type	Latitude Longitude	Elevation In Feet	EFFLUENT CHARACTERISTICS	Begins	Ends	Quan/ Conc	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
								Min. Daily	Avg. Monthly	Max. Daily	Measurement Freq.	Sample Type
042	F	37°57'00" 81°45'36"	1420	Flow	04/29/2005		Quan	N/A	Report Only	Report Only	Semi-monthly	Estimated
				pH	04/29/2005		Conc	6.00	N/A	9.00	Semi-monthly	Grab
				Total Suspended Solids	04/29/2005		Conc	N/A	35.00	70.00	Semi-monthly	Grab
				Settleable Solids	04/29/2005		Conc	N/A	N/A	0.50	See Section A of Permit	Grab
				Selenium, Total Recoverable	04/05/2007	04/05/2010	Conc	Report Only	Report Only	Report Only	Semi-monthly	Grab
				Iron, Total (As Fe)	04/29/2005		Conc	N/A	3.00	6.00	Semi-monthly	Grab
				Manganese, Total	04/29/2005		Conc	N/A	2.00	4.00	Semi-monthly	Grab
				Aluminum, Dissolved (As AL)	05/30/2008		Conc	N/A	Report Only	Report Only	Semi-monthly	Grab
043	F	37°56'14" 81°44'53"	1500	Flow	04/29/2005		Quan	N/A	Report Only	Report Only	Semi-monthly	Estimated
				pH	04/29/2005		Conc	6.00	N/A	9.00	Semi-monthly	Grab
				Total Suspended Solids	04/29/2005		Conc	N/A	35.00	70.00	Semi-monthly	Grab
				Settleable Solids	04/29/2005		Conc	N/A	N/A	0.50	See Section A of Permit	Grab
				Selenium, Total Recoverable	04/05/2007	04/05/2010	Conc	Report Only	Report Only	Report Only	Semi-monthly	Grab
				Iron, Total (As Fe)	04/29/2005		Conc	N/A	3.00	6.00	Semi-monthly	Grab
				Manganese, Total	04/29/2005		Conc	N/A	2.00	4.00	Semi-monthly	Grab
				Aluminum, Dissolved (As AL)	05/30/2008		Conc	N/A	Report Only	Report Only	Semi-monthly	Grab

PLAINTIFFS' EXHIBIT 7

Permit No. WV1017152

## Attachment A

**A. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge from Outlet Number(s) listed below:

2. EFFLUENT LIMITATIONS AND MONITORING FREQUENCY: Outlets should be limited and monitored by the permittee as specified below:

Outlet Number	Effluent Type	Latitude Longitude	Elevation In Feet	EFFLUENT CHARACTERISTICS	Begins	Ends	Quan/Conc	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS		
								Min. Daily	Avg. Monthly	Max. Daily	Units	Measurement Freq.	Sample Type
044	F	37°56'05" 81°44'47"	1490	Flow	04/29/2005		Quan	N/A	Report Only	Report Only	GPM	Semi-monthly	Estimated
				pH	04/29/2005		Conc	6.00	N/A	9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	04/29/2005		Conc	N/A	35.00	70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	04/29/2005		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab
				Selenium, Total Recoverable	04/05/2007	04/05/2010	Conc	Report Only	Report Only	Report Only	UG/L	Semi-monthly	Grab
				Iron, Total (As Fe)	04/29/2005		Conc	N/A	3.00	6.00	MG/L	Semi-monthly	Grab
				Manganese, Total	04/29/2005		Conc	N/A	2.00	4.00	MG/L	Semi-monthly	Grab
				Aluminum, Dissolved (As AL)	05/30/2008		Conc	N/A	Report Only	Report Only	MG/L	Semi-monthly	Grab
046	F	(See 3, 4) 37°57'14" 81°45'45"	1330	Flow	04/29/2005		Quan	Report Only	Report Only	Report Only	GPM	Semi-monthly	Estimated
				pH	04/29/2005		Conc	6.00	Report Only	9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	04/29/2005		Conc	Report Only	35.00	70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	04/29/2005		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab
				Selenium, Total Recoverable	04/05/2007	04/05/2010	Conc	Report Only	Report Only	Report Only	UG/L	Semi-monthly	Grab
				Iron, Total (As Fe)	04/29/2005		Conc	Report Only	3.00	6.00	MG/L	Semi-monthly	Grab
				Manganese, Total	04/29/2005		Conc	Report Only	2.00	4.00	MG/L	Semi-monthly	Grab
				Aluminum, Dissolved (As AL)	04/29/2005		Conc	Report Only	Report Only	Report Only	MG/L	Semi-monthly	Grab
		(See 3, 4)											

PLAINTIFFS' EXHIBIT 7

#### **A. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge from Outlet Number(s) listed below:
2. **EFFLUENT LIMITATIONS AND MONITORING FREQUENCY:** Outlets should be limited and monitored by the permittee as specified below:

[illegible]

**PLAINTIFFS' EXHIBIT 7**

1. The permittee is authorized to discharge from Outlet Number(s) listed below:

**2. EFFICIENT LIMITATIONS AND MONITORING FREQUENCY:** Outlets should be limited and monitored by the permittee as specified below:

**PLAINTIFFS' EXHIBIT 7**



1. The permittee is authorized to discharge from Outlet Number(s) listed below:

**2. EFFLUENT LIMITATIONS AND MONITORING FREQUENCY:** Outlets should be limited and monitored by the permittee as specified below:

[illegible]



### **A. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge from Outlet Number(s) listed below:
2. **EFFLUENT LIMITATIONS AND MONITORING FREQUENCY:** Outlets should be limited and monitored by the permittee as specified below:

[illegible]

**PLAINTIFFS' EXHIBIT 7**

1. The permittee is authorized to discharge from Outlet Number(s) listed below:

**2. EFFLUENT LIMITATIONS AND MONITORING FREQUENCY:** Outlets should be limited and monitored by the permittee as specified below:

[illegible]

**A. DISCHARGE LIMITATIONS AND MONITORING REQUIREMENTS**

1. The permittee is authorized to discharge from Outlet Number(s) listed below:

2. **EFFLUENT LIMITATIONS AND MONITORING FREQUENCY:** Outlets should be limited and monitored by the permittee as specified below:

Outlet Number	Effluent Type	Latitude Longitude	Elevation In Feet	EFFLUENT CHARACTERISTICS	Begins	Ends	Quan/Conc	DISCHARGE LIMITATIONS			Units	MONITORING REQUIREMENTS	
								Min. Daily	Avg. Monthly	Max. Daily		Measurement Freq.	Sample Type
046	F	37°57'14" 81°45'45"	1330	Flow	04/29/2005		Quan	Report Only	Report Only	Report Only	GPM	Semi-monthly	Estimated
				pH	04/29/2005		Conc	6.00	Report Only	9.00	Std Units	Semi-monthly	Grab
				Total Suspended Solids	04/29/2005		Conc	Report Only	35.00	70.00	MG/L	Semi-monthly	Grab
				Settleable Solids	04/29/2005		Conc	N/A	N/A	0.50	ML/L*	See Section A of Permit	Grab
				Selenium, Total Recoverable	04/05/2007	04/05/2010	Conc	Report Only	Report Only	Report Only	UG/L	Semi-monthly	Grab
					04/06/2010		Conc	Report Only	4.70	8.20	UG/L	Semi-monthly	Grab
				Iron, Total (As Fe)	04/29/2005		Conc	Report Only	3.00	6.00	MG/L	Semi-monthly	Grab
				Manganese, Total	04/29/2005		Conc	Report Only	2.00	4.00	MG/L	Semi-monthly	Grab
				Aluminum, Total (as Al)	04/29/2005	10/28/2007	Conc	N/A	Report Only	Report Only	MG/L	Semi-monthly	Grab
					10/29/2007		Conc	Report Only	0.008	0.14	MG/L	Semi-monthly	Grab
		(See 3, 4)		Aluminum, Dissolved (As AL)	04/29/2005		Conc	Report Only	Report Only	Report Only	MG/L	Semi-monthly	Grab

**ATTACHMENT B**  
**SCHEDULE OF COMPLIANCE**

**Interim Requirement**

**Compliance Date**

1. Schedule a meeting with your regional permit supervisor and inspector to discuss the applicability of the special material-handling plan and conceptual plan(s) for the treatment of selenium, including any pilot scale treatment system.

On or before four (4) months from the effective date of this Amended Order.

2. Submit a Status Report to the inspector.

Every six (6) months from the effective date of this Amended Order.

3. Surface mines only. Submit a special material-handling plan for selenium if one (1) or more years of coal extraction remain. The plan shall be submitted to the regional office for approval and shall detail the measures and steps to isolate the selenium producing material. The plan shall be considered a revision to the Surface Mining Permit and be implemented upon approval.

On or before six (6) months of the effective date of this Amended Order.

4. Submit a treatment plan detailing designs and appurtenances to prevent the discharge of selenium in concentrations greater than the final selenium effluent limitations. The plan shall be submitted to the regional office for approval. The plan shall be considered a revision to the Surface Mining Permit and modification to the NPDES Permit.

On or before twelve (12) months of the effective date of this Amended Order.

5. Commence construction and/or installation of the treatment facilities and/or pilot scale treatment system.

On or before eighteen (18) months of the effective date of this Amended Order

6. Complete installation or construction of the treatment facilities, and achieve compliance with the final selenium effluent limitations.

On or before thirty-six (36) months of the effective date of this Amended Order.

**RIGHT TO APPEAL**

Notice is hereby given of your right to appeal the terms and conditions of this agency action as provided under West Virginia Code § 22-11-21.

Pursuant to the provisions of § 22B-1-7(c), a person subject to this action (permittee) may file an appeal to the Environmental Quality Board (EQB) within 30 days of being served notice of such agency action.

For other parties (citizens) adversely affected or aggrieved by this action, an appeal may be filed to the EQB within 30 days after the date upon which service was complete to the subject person "(permittee)". Such Notice of Appeal shall be sent to the EQB on the form prescribed by the Board.

West Virginia Environmental Quality Board  
601 57th Street, SE  
Charleston, West Virginia 25304